

SENATE BILL NO. 90

INTRODUCED BY F. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR IMPOUNDMENT OF THE LICENSE PLATES OF EACH MOTOR VEHICLE OWNED OR CO-OWNED BY A PERSON UPON RECEIPT BY THE DEPARTMENT OF JUSTICE OF A RECORD OF A DRIVER'S CONVICTION OF OR FORFEITURE OF BAIL NOT VACATED FOR A SECOND OR SUBSEQUENT OFFENSE UNDER SECTION 61-8-401 OR 61-8-406, MCA, OR UPON RECEIPT OF A PEACE OFFICER'S REPORT OF A REFUSAL TO SUBMIT TO A BLOOD OR BREATH TEST; PROVIDING FOR SPECIAL PLATES WITH A SPECIAL IDENTIFICATION; AND AMENDING SECTION 61-8-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Impoundment of license plates for alcohol offense violations -- special plates. (1) Upon receipt of a peace officer's report under 61-8-402 or 61-8-409 of a refusal to submit to a test or upon receipt of a record of a person's conviction of or forfeiture of bail not vacated for a second or subsequent offense under 61-8-401 or 61-8-406, the department shall immediately issue and mail to the person a copy of an order impounding the license plates of all motor vehicles owned or co-owned by the person at the time of the receipt of the report or record. A copy of the order must at the same time be mailed to the sheriff of the county in which the person resides and entered as criminal history record information in the criminal justice information system.

(2) Within 5 days of receipt of the order, the person must surrender to the sheriff of the county in which the person resides the license plates of all motor vehicles owned or co-owned by the person. The sheriff shall within 5 days of the receipt of the plates give them to the nearest office of the Montana highway patrol, along with a copy of the impoundment order. Failure of the person to surrender the plates within 5 days is an absolute liability criminal offense within the meaning of 45-2-104 and is punishable by imprisonment for not more than 30 days, a fine not to exceed \$500, or both. If the person fails to surrender the plates within 5 days, the sheriff shall identify and locate the motor vehicles subject to the impoundment order, seize the plates, and give them to the nearest office of the Montana highway patrol, along with a copy of the impoundment order.

(3) A person who is the sole owner or a co-owner of a motor vehicle for which the plates have been

1 impounded under this section may apply to the department for special 1-year license plates. The license plate
2 designation must include a series of numbers or letters or a combination of numbers and letters that identifies
3 the motor vehicle to peace officers as one for which the regular plates have been impounded under this section.
4 The fee for the plates is equal to the cost of licensing the motor vehicle for 1 year with regular plates plus \$50.
5 The plates may be extended for 1 year upon payment of a fee equal to the cost of licensing the motor vehicle
6 for that year with regular plates plus \$50. Two years after issuance of the impoundment order, the motor vehicle
7 is eligible for regular plates. For each year that special plates are issued under this subsection, \$25 of the fee
8 must be forwarded by the department to the sheriff of the county in which the act leading to impoundment
9 occurred, except that if the act occurred within the boundaries of a city or town, the \$25 must be forwarded to
10 the police department of the city or town. The money must be used to fund law enforcement and programs
11 relating to the use and misuse of alcoholic beverages. For each year that special plates are issued under this
12 subsection, \$25 of the fee must be deposited by the department in the state general fund.

13
14 **Section 2.** Section 61-8-402, MCA, is amended to read:

15 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in
16 actual physical control of a vehicle upon ways of this state open to the public is considered to have given
17 consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount
18 or detected presence of alcohol or drugs in the person's body.

19 (2) (a) The test or tests must be administered at the direction of a peace officer when:

20 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
21 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,
22 drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

23 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

24 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
25 a vehicle:

26 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
27 resulting in property damage; or

28 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
29 45-2-101, or death.

30 (b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6) and shall issue an order impounding the person's license plates under [section 1].

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or

1 more tests.

2 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
3 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
4 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
5 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
6 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
7 under this subsection is not reviewable under 61-8-403.

8 (9) A suspension under this section is subject to review as provided in this part.

9 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes
10 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
11 offense not in this part."

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13 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
14 integral part of Title 61, chapter 8, part 7, and the provisions of Title 61 apply to [section 1].

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